

Right-of-Way Clearance

When Federal Funds are used in any phase of a federal-aid project, right of way and property ownership issues must be addressed and the project must receive right-of-way clearance from ADOT before the federal funds can be authorized. In terms of right-of-way and property ownership, most Transportation Enhancement projects are simple and straightforward, with all activities occurring within the sponsoring agency's property or ADOT right-of-way. In which case the Right-of-Way Certification Form must be completed and submitted to the ADOT project right-of-way coordinator for review and to complete the clearance process. The submittal of your scoping document will trigger the startup of the right-of-way process since your project manager with distribution a copy of the document to the ADOT Right-of-Way Project Management Section for review and comment.

However, real estate and property management issues must be addressed in many of the proposed Transportation Enhancement activities. Several of the listed activities involve possible property acquisition, restoration and rehabilitation of structures, and lease agreements. Project sponsors and their consultants must work directly with their real estate department and consultant, and ADOT project right-of-way coordinator, to ensure that all applicable federal and state requirements are address.

On January 2, 1971, Public Law 91-646, the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970," (Uniform Act) was signed into law. The Uniform Act, provides important protections and assistance for people affected by Federally funded projects. This law was enacted by Congress to ensure that people whose real property is acquired, or who move as a result of projects receiving Federal funds, will be treated fairly and equitably and will receive assistance in moving from the property they occupy.

Property management issues to consider for Transportation Enhancement projects follow:

- Prospective applicants such as conservation groups or individuals should have a public co-sponsor to assure that there will be continued responsibility on the part of a public agency for the project. Measures to maintain the public investment over time must be considered and should be included in project proposals and/or agreements.
- The general rule of thumb for significant Federal-aid investments is that the public interest in and access to the activity should be in perpetuity. However, the extent of real property interest needed for the protection of the public interest in the expenditure of TE funds is somewhat dependent on the nature and magnitude of the expenditure. For example, if the project were simply to provide a gravel parking lot to be used to enhance a transportation use on lands under state ownership, a limited property use agreement would be sufficient. An expenditure of \$5,000 for a gravel parking lot with an agreement that the lot would be retained in that use for 5-7 years would seem to be reasonable.
- However, the expenditure of \$1,000,000 to rehabilitate a historic train station would require a much longer time period to amortize the public investment. It would not be appropriate to spend the money to enhance the train station without a commitment that it would not be demolished; the historic integrity destroyed the next year, or the planned use for which the award was granted substantially changed. Major expenditures warrant that consideration be given to how, following the investment, the property will be maintained and what will be the source of financial resources for necessary repair, renewal and rehabilitation.

It is important that the applicant discuss how and for what purposes the property will be utilized following the rehabilitation. Where properties are to be leased with the income going to the applicant, it is appropriate that consideration be given to a portion of the

proceeds going to the future maintenance of the structure with accounting consideration to allow for reserve funds for replacements.

- Where the primary purpose of the project is to enhance a historic transportation facility, coordination with the appropriate historic agencies can help to assure that protective language is included in any agreement before the project is authorized for federal funding. The project agreement should clearly state the purpose of the project and outline how the property will be utilized and maintained in the future.
- Protection of property rights for the continued use of a facility, or for use over a specified period of time should be captured in the form of a legal document which can be recorded in the land records. These types of property reservations could be leases, easements or other evidence of a property interest recognized in the State.
- Reversionary clauses may be appropriate in some instances where the property is originally obtained at no cost from a Federal agency through a Federal land transfer. These clauses would assure that where the property is no longer needed for the purpose for which it was transferred it would be offered for return to the original owner.
- Inventory, control, and removal of outdoor advertising is an eligible activity. Nonconforming signs may be acquired with federal funds. Effective controls must be in place to prohibit new signs from being erected where those removed with federal-aid were located. These funds may also be used for sign inventory management and development activities.
- Acquisition of real property for Transportation Enhancement projects is subject to the [Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970](#) regarding acquisition procedures and relocation assistance. An agency or qualified organization without the power of eminent domain is subject to the limited requirements set forth in 49 CFR 24.101(a)(2).
- TE projects can involve real property, funds, materials, or services provided by units of local government and private entities. A donation of this type may be eligible for a credit to the matching share. To be eligible for a credit, the real property may not be part of a current transportation facility. The fair market value of the real property, materials, or services may be credited against the non-federal share of the project.

Acquisition must be carried out in accordance with the provisions of Public Law 91-646, the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970. Uniform regulations establishing procedures for all Federal and State agencies were published in the Federal Register on March 5, 1985 as 49 CFR Part 24. The most recent revision is dated March 2, 1989.

These regulations prescribe general qualifications for appraisers, review appraisers, and for the content of the appraisal document. **ADOT can provide you with a list of certified appraisers that are familiar with the above requirements for the appraisal. If you wish to use another appraiser, please contact our office for information on appraisal standards and specifications, which your contract appraiser will need to follow.**

In either case you will need to provide the appraiser with a right of way plan or sketch, property legal descriptions and title reports.

NOTE: Property owners should not be contacted about acquisition of right of way until the environmental process is complete.

1. Donation: The law (23 U.S.C. 323) provides that, in order to obtain a parcel by donation, you must first inform the owner of the right to receive just compensation for his property. A brochure

containing the required information should be given to the owner. If the owner desires to donate, secure from them a signed waiver stating that they have been informed of their rights.

2. Appraisal: If the owner does not desire to donate, the next step is to have an appraisal made. Prior to the appraisal, you should identify the ownership by means of a preliminary title search.

3. Appraisal Review: A qualified review appraiser shall examine all appraisals to ensure that they meet Agency appraisal requirements. The review appraiser's certification and the recommended or approved value of the property shall be set forth in a signed written statement which identifies the appraisal reports reviewed and explains the basis for such recommendation.

4. Written Offer: At the first contact with the owner where price is discussed, the owner must be presented an offer in writing of the just compensation amount, together with a copy of the information brochure. **The law specifies the minimum content of the written offer.**

5. Files: A separate folder should be maintained for each right of way parcel. The folder should contain a **copy of the negotiator's diary or contact report summarizing each action regarding the parcel; the original signed donation waiver if the parcel was obtained by donation; if purchased, a copy of the appraisal, copy of the offer letter and a copy of the deed or other instrument.**

END OF DOCUMENT